

## EXHIBIT B

2008 04 29 Final Transcript of Deposition of Belfonti.txt

1

1

2 IN THE UNITED STATES DISTRICT COURT

3 DISTRICT OF CONNECTICUT

4 -----X

5 ARUBA HOTEL ENTERPRISES N.V.,

6

7 Plaintiff,

8 v.

9 MICHAEL BELFONTI, MCR PROPERTY

10 MANAGEMENT INC. and CEB

11 IRREVOCABLE TRUST,

12

13 Defendants.

14 -----X

15

16 April 29, 2008

17 10:12 a.m.

18

19 Deposition of MICHAEL BELFONTI,  
20 held at the offices of Proskauer Rose LLP,  
21 New York, New York, pursuant to Notice,  
22 before NANCY SORENSEN, a Notary Public of  
23 the State of New York.

24

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2 A P P E A R A N C E S:

3 PROSKAUER ROSE LLP

4 Attorneys for Plaintiff  
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M. Belfonti

1  
2 A. I don't believe so.

3 MR. MERVIS: Can you mark this,  
4 please.

5 (Belfonti Exhibit 1, a loan agreement  
6 for the Aruba Hotel Enterprises N.V., marked  
7 for identification, as of this date.)

8 Q. Mr. Belfonti, the reporter's placed  
9 in front of you what we have had marked for  
10 identification as Belfonti Exhibit 1.

11 Take as much time as you need, but my  
12 first question on this is do you recognize the  
13 document?

14 A. Yes.

15 Q. What is it?

16 A. It's a loan agreement for the Aruba  
17 Hotel Enterprises N.V.

18 Q. I want you to -- well, unfortunately,  
19 I don't have Bates numbers on this, but if you  
20 turn to page 103, with the page that has the  
21 number 103 on the bottom, and I want you to then  
22 turn two more pages, please?

23 A. Okay.

24 Q. You see a line that says, "borrower"  
25 that's underlined?

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1 M. Belfonti

2 A. Yes.

3 Q. There is a signature there. Is that  
4 your signature?

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5 A. Yes, it is.

6 Q. Did you sign this loan agreement,  
7 Exhibit 1, on behalf of Aruba Hotel Enterprises  
8 N.V.?

9 A. I believe so.

10 Q. Just to save some paper, I'm going to  
11 refer to Aruba Hotel Enterprises N.V. as AHE  
12 during the course of this deposition; is that  
13 okay with you?

14 A. That's fine.

15 Q. At the time that you signed this loan  
16 agreement, Belfonti Exhibit 1, what role, if  
17 any, did you have with AHE?

18 A. Could you repeat the question?

19 MR. MERVIS: Read it back.

20 (The record was read.)

21 A. At the time of the signing?

22 Q. Yes.

23 A. I'd like you to rephrase the  
24 question. I'm sorry.

25 Q. When you signed this loan agreement,

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1 M. Belfonti

2 which is dated as of May 3, 2006, between AHE  
3 and WIBC Aruba N.V., did you have any role or --

4 MR. MERVIS: Well, let me withdraw.

5 Q. Did you have any interest in AHE?

6 A. After I signed, I believe I did, yes.

7 Q. Describe for me, if you would, the

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nature of the interest that you had?

8  
9 A. I had a 75 percent ownership interest  
10 in the entity.

11 Q. The entity being AHE?

12 A. Yes.

13 Q. That was an indirect interest;  
14 correct?

15 A. Yes.

16 Q. Through a series of holding  
17 companies?

18 A. Yes.

19 Q. The other 25 percent, at the time,  
20 was held by Mr. Adam Hochfelder; is that right?

21 A. I don't believe so.

22 Q. Fair point. A Hochfelder family  
23 trust?

24 A. Yes, I believe it was Aligned  
25 Capital, to my recollection.

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1 M. Belfonti

2 Q. Fair enough.

3 Did you understand that Aligned  
4 Capital was beneficially owned by Adam  
5 Hochfelder or some trust affiliated with his  
6 family?

7 A. I think it was owned by his father,  
8 Jim Hochfelder. And the beneficiaries of  
9 Aligned were his children, I believe.

10 Q. His, being Adam Hochfelder's  
11 children?

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12 A. Yes.

13 Q. This agreement memorializes a loan;  
14 does it not?

15 A. Yes.

16 Q. What, to your understanding, was the  
17 purpose of the loan?

18 A. The loan was made to purchase the  
19 Wyndham Resort down in Aruba.

20 Q. When you say, "to purchase," who was  
21 the purchaser?

22 A. One of our related entities. It  
23 could have been -- I'm not sure.

24 Q. Fair enough.

25 When you say, "one of our related

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2 entities," is it your understanding that,  
3 ultimately, AHE was the, became the owner of the  
4 Wyndham?

5 A. I believe AHE was the owner of the  
6 Wyndham before we purchased it.

7 Q. Fair enough.

8 So at the time that you obtained a 75  
9 percent ownership interest in AHE, AHE owned the  
10 Wyndham Resort; is that correct?

11 A. That is correct.

12 Q. The name of the resort changed at  
13 some point thereafter; is that right?

14 A. That is correct.

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15 Q. What did it change to?

16 A. The Aruba Hotel Resort & Casino, I  
17 believe.

18 Q. That was for a period of time;  
19 correct?

20 A. That was an interim name before we  
21 flagged it as a Westin.

22 Q. When it was flagged as a Westin, what  
23 was the property called?

24 A. The Westin Aruba.

25 Q. Just again, to save paper, I'm going

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2 to generally be referring to that hotel property  
3 as "the hotel" during the course of the  
4 deposition today, is that okay with you?

5 A. That's fine.

6 Q. Were the proceeds of the loan that's  
7 memorialized in Belfonti Exhibit 1, used by you  
8 in connection with your obtaining an interest in  
9 AHE?

10 A. Yes.

11 Q. To your knowledge, was it used for  
12 any other purpose?

13 MR. MERVIS: Withdrawn.

14 Q. To your knowledge, were the proceeds  
15 of the loan that's memorialized in Belfonti  
16 Exhibit 1, used for any other purpose?

17 A. No.

18 MR. MERVIS: Mark this, please.

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19 (Belfonti Exhibit 2, a mezzanine loan  
20 agreement, marked for identification, as of  
21 this date.)

22 Q. Mr. Belfonti, the reporter's placed  
23 in front of you what we have had marked for  
24 identification as Belfonti Exhibit 2.

25 Again, take as much time as you need,

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2 but my first question to you is whether you  
3 recognize the document?

4 A. Maybe could you help me, Mr. Mervis,  
5 I'm looking for the amount here?

6 Q. The amount of the loan?

7 A. Yeah.

8 Q. Well, if you look at the first page,  
9 there's a whereas clause at the bottom of the  
10 page that goes over to the second page.

11 That may help you.

12 A. I see. Yes, I recognize the  
13 document. Thank you.

14 Q. What is it?

15 A. It is a mezzanine loan agreement.

16 Q. I want you to turn to, again, I don't  
17 have Bates stamps on this. I want you to turn  
18 to page 60 or the page that has number 60 at the  
19 bottom?

20 I'd like you to just turn to the next  
21 page, the very next page.



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You will see a signature on that

22

23 page?

24 A. Yes.

25 Q. Is that your signature?

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1 M. Belfonti

2 A. It is.

3 Q. It says on this page that you signed  
4 as the president of something called BCP Florin  
5 LLC; you see that?

6 A. Yes, I do.

7 Q. What, at the time, was BCP Florin  
8 LLC?

9 A. It was an upstream entity from AHE.

10 Q. So an indirect parent of AHE?

11 A. I don't know how you would legally  
12 phrase it. But it was an -- all I know, it's an  
13 upstream entity. I don't know if it's a parent,  
14 but it's an upstream entity.

15 Q. Fair enough.

16 You were a 75 percent beneficial  
17 owner of BCP Florin, at the time?

18 A. I was.

19 Q. To your understanding, what was the  
20 purpose of this document, Exhibit 2?

21 A. This was a loan to BCP Florin from  
22 Petra Capital.

23 Q. Were you represented -- when I say  
24 "you," either you or BCP Florin, represented by  
25 counsel in connection with this transaction?

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5 Q. The proceeds of the loan memorialized  
6 in Belfonti Exhibit 2 --

7 MR. MERVIS: Withdrawn.

8 Q. To your recollection, was there any  
9 restriction or prohibition on what the borrower  
10 could do with the proceeds of the loan  
11 memorialized in Belfonti Exhibit 2?

12 A. No.

13 Q. So for example, if you had wanted to  
14 buy a car with that money, you could have done  
15 that; right?

16 A. I don't believe there was any  
17 prohibition on what we could do with it.

18 Q. It didn't have to be used in  
19 connection with the hotel; correct?

20 A. That is correct.

21 Q. You don't recall how the money was  
22 actually used; correct?

23 A. No.

24 Q. Are there any records, Mr. Belfonti,  
25 that would indicate how the proceeds of the loan

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1 M. Belfonti  
2 memorialized in Exhibit 2 are used?

3 A. Sure there are.

4 Q. Where would those records be today?

5 A. In my office.

6 Q. Your office is in Manhattan?

7 A. Connecticut.

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8 Q. In Connecticut. What town is that

9 in?

10 A. Hamden.

11 Q. Do you still have an ownership

12 interest in AHE today?

13 A. I do not.

14 Q. When did you cease having ownership

15 interest in AHE?

16 A. I believe it was in April of '07.

17 Q. Same question with respect to BCP

18 Florin, do you have an ownership interest in

19 that entity today?

20 A. I don't believe so.

21 Q. When, to your recollection, did you

22 cease to have an ownership interest in BCP

23 Florin?

24 A. I believe it was at the same time.

25 Q. April 2007?

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22

1 M. Belfonti

2 A. Yes.

3 Q. Do you recall how it came to pass  
4 that you ceased to have an ownership interest in  
5 AHE in April 2007?

6 A. There was a default under the loan,  
7 and when we stopped paying the loan, it  
8 automatically, the shares automatically, through  
9 some procedure, which I'm not familiar with,  
10 vested with the mezz lender.

11 Q. Let me just make sure that we get

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12 some clarity on that.

13 You say there was a default on the  
14 loan; which loan?

15 A. The wachovia loan.

16 Q. That is the loan that's memorialized  
17 in Belfonti Exhibit 1?

18 A. Correct.

19 Q. I think you said that through some  
20 procedure, the shares of AHE went to the mezz  
21 lender; is that right?

22 A. That's correct.

23 Q. The mezz lender being Petra?

24 A. That is correct.

25 Q. Same question with respect to BCP

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1 M. Belfonti

2 Florin.

3 Do you know how it is that you, that  
4 you ceased having ownership interest in that  
5 entity?

6 A. Not clearly.

7 Q. Fair enough.

8 Are you familiar with a company  
9 called MCR Property Management, Inc.?

10 A. I am.

11 Q. Again, to save paper, I'm going to  
12 refer to that entity in this deposition as MCR;  
13 is that okay with you?

14 A. Sure.

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19 Q. I want to draw your attention to the  
20 first entry on the chart, the top entry on the  
21 chart?

22 what, to your understanding -- this  
23 is the one that has, it's on the left-hand  
24 column. It has the date May 3, 2006; you see  
25 that?

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1 M. Belfonti

2 A. I do.

3 Q. What, to your understanding, does  
4 that entry represent?

5 A. The 4 million 873 and change are  
6 monies that Belfonti Capital Partners advanced  
7 as a loan in order to close the transaction with  
8 AHE.

9 Q. To what entity or entities were those  
10 monies advanced as a loan?

11 A. Various entities, but I'm not sure  
12 which ones.

13 MR. KIM: Did you say to or from?

14 MR. MERVIS: I don't know.

15 Can you read the question back.

16 (The record was read.)

17 MR. MERVIS: Let me restate it  
18 because it wasn't so clear.

19 Q. To which entities -- who were the  
20 borrowers or who was the borrower or borrowers  
21 of those, of the alleged loan?

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22 A. AHE.

23 Q. Who, on behalf of BCP, decided to  
24 make the loan?

25 A. I did.

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1 M. Belfonti

2 Q. Who, on behalf of AHE, decided to  
3 accept the loan?

4 A. I did.

5 Q. Was there any, to your knowledge, was  
6 there any negotiation about the terms of this  
7 alleged loan?

8 A. No.

9 Q. Were there terms for this alleged  
10 loan?

11 A. Just that it had to be paid back and  
12 it would incur an interest rate.

13 Q. Let me probe on that.

14 Was there, with respect to this  
15 alleged loan, which we'll call the -- why don't  
16 we call this the \$4.8 million loan, just as a  
17 shorthand; is that okay?

18 A. Yes.

19 Q. With respect to the alleged \$4.8  
20 million loan, was there a payment schedule?

21 A. No.

22 Q. Was there a maturity date?

23 A. No.

24 Q. Was any, was AHE required to make any  
25 interest payments?

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2 A. No.

3 Q. Was there any security for the loan?

4 A. No.

5 Q. Were there any restrictions placed on  
6 how the proceeds of the alleged \$4.8 million  
7 loan could be used?

8 A. No.

9 Q. Was there any provision as to whether  
10 the --

11 MR. MERVIS: Withdrawn.

12 Q. Was there any understanding as to  
13 whether the \$4.8 million alleged loan would be  
14 subordinated to any of AHE's debt obligations?

15 A. That was an understanding.

16 Q. Who was that understanding between?

17 A. Both me, as the lender, and me, as  
18 the owner of AHE.

19 Q. What was the understanding?

20 A. That the first mortgage to Wachovia  
21 was most important and had to be paid first.  
22 And then the mezzanine loan by Petra would have  
23 to be paid also.

24 Q. Then?

25 A. That was the most important.

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M. Belfonti

1  
2 Q. I understand that, but did you form  
3 an understanding as to whether, for example,  
4 those two loans had to be paid back first,  
5 before there'd be repayment of this alleged \$4.8  
6 million loan?

7 A. I need the question again.

8 MR. MERVIS: Go ahead.

9 (The record was read.)

10 A. I need it again. Can you break it  
11 down, actually?

12 Q. Yes, I'll try to break it down.  
13 Do you understand what it means for  
14 debt to be subordinated?

15 A. Yes.

16 Q. What's your understanding of that  
17 term?

18 A. That the debt that Wachovia, as an  
19 example, would give, would be in first position  
20 over anything else.

21 Q. So with respect to -- so what's your  
22 understanding does that mean with respect to any  
23 other indebtedness that AHE incurred?

24 A. I'm having a tough time with the  
25 question.

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1 M. Belfonti

2 Q. You understood, didn't you, that the,  
3 that BCP Florin couldn't repay Petra's loan  
4 before AHE paid off Wachovia's loan in full;  
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M. Belfonti

1  
2 claim were aware or was aware of the alleged  
3 \$4.8 million loan?

4 A. Possibly, Mr. Herman.

5 Q. Who is Mr. Herman?

6 A. He's the CFO.

7 Q. Of MCR?

8 A. MCR.

9 Q. Provided services to be BCP?

10 A. Yes.

11 Q. Where did he work, Mr. Belfonti?

12 A. In Hamden.

13 Q. Ever work in New York?

14 A. No.

15 MR. MERVIS: Mark this, please.

16 (Belfonti Exhibit 7, a financial  
17 settlement statement for the Aruba Hotel  
18 Enterprises transaction, marked for  
19 identification, as of this date.)

20 Q. Go back to the chart, please, on  
21 Exhibit 6? The far right-hand column, it says,  
22 "operating expenses"; do you see that?

23 A. I do.

24 Q. Again, you've already testified that  
25 everything in here is accurate.

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1 M. Belfonti

2 what do you mean by operating  
3 expenses or what does operating expenses mean?

4 A. I think that was just an internal  
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5 classification.

6 Q. What was this money used for,  
7 Mr. Belfonti?

8 A. The original deposit of \$1 million  
9 was the original deposit on the hotel or the  
10 purchase AHE, lawyers' fees, accounting fees,  
11 second deposit of a million dollars on the  
12 hotel, tax opinions, appraisals, points to  
13 Wachovia. All, again, put in by my entities as  
14 a loan into the project.

15 Q. So before we get to this,  
16 Mr. Belfonti, before we get to this, just so  
17 we're clear, in fact, the alleged \$4.8 million  
18 BCP loan was not used for operating expenses;  
19 correct?

20 A. I think that's a misclassification.

21 Q. Do you know whether this chart was  
22 attached to the lawsuit that these four entities  
23 filed against AHE in Aruba?

24 A. I don't know.

25 Q. Do you know if anybody --

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1 M. Belfonti

2 MR. MERVIS: Withdrawn.

3 Q. All right, Mr. Belfonti, you've been  
4 handed what we have had marked for  
5 identification as Exhibit 7.

6 I will ask you to take as much time  
7 as you need, but my question is whether you

22 2008 04 29 Final Transcript of Deposition of Belfonti.txt  
between a loan and a capital contribution?

23 A. There is.

24 Q. What's the difference?

25 A. Well, usually with a capital

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1 M. Belfonti

2 contribution, the money that's put in as  
3 capital. You would get something in return for  
4 that. So you would get ownership.

5 None of these loans that were put up  
6 resulted in any ownership for the entities that  
7 put them up.

8 So if I can look at your chart here,  
9 Belfonti Capital Partners LLC, Belfonti Holdings  
10 LLC, Belfonti Capital Partners LLC, MCR, the  
11 money that came out of my mom's trust, none of  
12 those entities had a beneficial interest in AHE.  
13 So how could it ever be capital?

14 MR. MERVIS: This is probably as good  
15 a time as ever if you want to break.

16 (Luncheon recess: 12:18 p.m.)

17

18

19

20

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M. Belfonti

1  
2 A. Sometime in 2007.

3 Q. What was his, what were his duties  
4 and responsibilities while he worked in the  
5 New York office?

6 A. He was responsible mostly for the  
7 construction management of the hotel, converting  
8 it from a Wyndham to a Westin.

9 Q. Did he, to your knowledge, work for  
10 AHE at any time?

11 A. No.

12 Q. Provide any services for AHE?

13 MR. MERVIS: Withdrawn. Bad  
14 question.

15 Q. Do you know where he is today?

16 A. Works for Starwood.

17 Q. Going back to the chart on the fourth  
18 page of Exhibit 6.

19 Directing your attention to the  
20 second entry from the top, do you know what --  
21 that's the one that starts July 25, 2006.

22 Do you know what transaction is  
23 represented by that line?

24 A. I do.

25 Q. What transaction is that?

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2 A. As part of the Starwood management  
3 contract, we had to keep approximately \$500,000  
4 in the account with them.

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5 Q. Let me back up.

6 First of all, who is "we"?

7 A. I, AHE.

8 Q. AHE, the entity that you were in  
9 control of at the time?

10 A. Correct.

11 Q. Starwood, I think you described as  
12 the manager of the hotel.

13 what did you mean by that?

14 A. They were the management company of  
15 the hotel.

16 Q. That was pursuant to an agreement  
17 that AHE -- that you, on behalf of AHE, entered  
18 into with Starwood?

19 A. That is correct.

20 Q. So the figure \$499.950 in the chart  
21 on page 4 of Exhibit 6, that is money, that's  
22 money that was given to Starwood; is that  
23 correct?

24 A. That is correct.

25 Q. Who, what entity gave that money to

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1 M. Belfonti

2 Starwood?

3 A. I'm not sure.

4 Q. Does the entry in the second line on  
5 this chart, on the fourth page of Exhibit 6,  
6 represent, in your mind, a loan from Belfonti  
7 Holdings to AHE?

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8 A. Yes.

9 Q. All right, I think just again for  
10 brevity sake, I will refer to this as the  
11 alleged \$500,000 Belfonti Holdings loan; that  
12 okay?

13 A. Sure.

14 Q. Who, with Belfonti Holdings, decided  
15 to make this loan, the alleged \$500,000 loan?

16 A. It was prompted by a call from  
17 Starwood saying that we needed to put money in  
18 this working capital account.

19 Q. Who placed the call from Starwood?

20 A. I'm not sure.

21 Q. Who received the call from Starwood?

22 A. It could have been a call or an  
23 e-mail, but I don't recall.

24 Q. Who received the communication on  
25 your side?

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1 M. Belfonti

2 A. It would be either me or Victoria.

3 Q. So either you or Victoria -- it came  
4 to your attention that Starwood had made a  
5 request for \$500,000; is that right?

6 A. That is correct.

7 Q. In response to that, what did you do?

8 A. We wired a loan to AHE in the amount  
9 of \$500,000.

10 Q. Who is "we"?

11 A. I.

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12 Q. From what entity did you -- did that  
13 money come out of?

14 A. I'm not sure. The chart here says  
15 Belfonti Holdings, so it's stands to reason  
16 that's who loaned the money.

17 Just as a footnote, the 499,950  
18 should be 500, but I think there was a \$25 or  
19 \$50 wiring fee, and that's why it only shows  
20 499,950.

21 Q. When you say "it should be 500," what  
22 do you mean by the?

23 A. That's the exact number. But there  
24 was \$50 taken off for the wire.

25 Q. In your mind, Mr. Belfonti, what was

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1 M. Belfonti  
2 the amount of the loan to AHE?

3 A. \$499,950.

4 Q. So you didn't charge AHE for the \$25  
5 or \$50 wire fee; is that your testimony?

6 A. I guess not.

7 Q. Who, what individual, on behalf of  
8 Belfonti Holdings, agreed to make this loan?

9 A. I did.

10 Q. What individual, on behalf of AHE,  
11 agreed to accept this loan?

12 A. I did.

13 Q. Was there any negotiation concerning  
14 the terms of the alleged \$500,000 Belfonti

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Holdings loan?

15 A. No.

16 Q. By the way, I may have neglected to  
17 ask this.

18 Going back to the \$4.8 million  
19 alleged BCP loan, was there a due date for the  
20 loan?  
21

22 In other words, a date by which it  
23 had to be repaid?

24 A. No.

25 Q. With respect to the alleged \$500,000

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1 M. Belfonti

2 Belfonti Holdings loan, was there a maturity or  
3 due date for that loan?

4 A. No.

5 Q. Was there any payment schedule?

6 A. No.

7 Q. Was there any requirement that AHE  
8 pay interest on the alleged loan?

9 A. No.

10 Q. Was any security given by AHE for the  
11 alleged loan?

12 A. No.

13 Q. To your knowledge, were any  
14 restrictions placed on how the proceeds of the  
15 alleged \$500,000 Belfonti Holdings loan could be  
16 used?

17 A. Yes.

18 Q. On what restrictions were those?



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19 the left-hand -- well, on the left-hand side,  
20 there's a code under account I.D.; you see that  
21 1,000?

22 A. I do.

23 Q. And a description cash operating.

24 Do you know what either of those,  
25 either the code or the description mean?

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1 M. Belfonti

2 A. No.

3 Q. Going to the second page of the  
4 exhibit, going down the page to the, on the  
5 left-hand side to the third entry -- actually, I  
6 guess it's the fourth entry, you will see  
7 there's a code 2206; see that?

8 A. I do.

9 Q. Do you know what that code is for?

10 A. I don't.

11 Q. You will see a line that says,  
12 underneath it that says, "Due to from Aruba  
13 Hotel"; see that?

14 A. I do.

15 Q. Do you know what that description  
16 means?

17 A. I don't.

18 Q. Is this something that, to your  
19 understanding, Ms. Carpenter would have  
20 knowledge of?

21 A. Yes.

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22 Q. Okay, you can put that aside.  
23 Going back to Exhibit 6, please, and  
24 to the chart, page 4, and directing your  
25 attention to the third line item from the top,

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1 M. Belfonti  
2 the one that has the date, starts with the date  
3 December 8, 2006; do you see that?

4 A. I do.

5 Q. Do you have an understanding as to  
6 what this line, what transaction this line  
7 represents?

8 A. I do.

9 Q. What?

10 A. Wachovia had set aside a \$10 million  
11 interest reserve account that was to be used to  
12 carry the hotel as it related to any financial  
13 shortfalls.

14 And by December of '06, we had gone  
15 through that \$10 million. And in order to keep  
16 the hotel, we need another \$393,000 or risk  
17 going into default on the mortgage.

18 Q. In that answer, you used the word  
19 "we" a number of times. Who is we?

20 A. I. I always refer to everyone so it  
21 looks like a team, so, but it's me.

22 Q. You said there's a \$10 million  
23 interest reserve fund?

24 A. There was, yes.

25 Q. That was, that money was supposed to  
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1 M. Belfonti

2 be used to make interest payments on the  
3 Wachovia loan; is that right?

4 A. It was.

5 Q. Was it intended, was it intended in  
6 any way, shape or form to actually fund the  
7 operations of the hotel?

8 A. Yes.

9 Q. That too?

10 A. That also.

11 Q. So if I am understanding correctly,  
12 by December of '06, you had essentially used up  
13 that entire fund; is that right?

14 A. That is correct.

15 Q. Is that because the hotel was  
16 performing less favorably than had been  
17 projected?

18 A. That is correct.

19 Q. So if I'm understanding it correctly,  
20 you, as the borrower on the Wachovia loan,  
21 needed to find \$393,000 to make payment; is that  
22 right?

23 A. That is correct.

24 Q. If you hadn't made that payment, what  
25 could have happened?

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M. Belfonti

1  
2 A. The loan could have gone into  
3 default.

4 Q. What effect would that have had, if  
5 any, on AHE?

6 A. They would have been in default of  
7 their obligation with the Wachovia loan.

8 Q. Would that have, for example, caused  
9 the hotel to stop operating?

10 A. No.

11 Q. Would it have caused AHE to go out of  
12 business?

13 A. No.

14 Q. It would have, could have caused you,  
15 Michael Belfonti, to lose your equity interest  
16 in AHE; correct?

17 A. That is correct.

18 Q. Can you think of any other  
19 consequence that would have occurred, had you  
20 not come up with the \$393,000 to make the  
21 interest payment to Wachovia?

22 A. No.

23 Q. Is the transaction that's reflected  
24 on the third line of the chart on page 4 of  
25 Exhibit 6, is that, in your mind, representative

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1 M. Belfonti

2 of a loan to AHE?

3 A. Which one are you referring to?

4 Q. The one, the third line from the top,  
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5 the one that starts December 8, 2006.

6 A. In the amount of 393,000?

7 Q. That's right, that's right.

8 Is that, in your mind, a loan from  
9 somebody to AHE?

10 A. It is.

11 Q. Who is the lender?

12 A. Belfonti Capital Partners LLC.

13 Q. Who is the borrower?

14 A. AHE.

15 Q. Who on the BCP, on the lender's side

16 --

17 MR. MERVIS: Withdrawn.

18 Q. Again, I'm going to shorthand this  
19 and refer to it as the \$393,000 BCP loan; okay?

20 A. Yes.

21 Q. Who on the BCP side made the decision  
22 to grant this loan?

23 A. Me.

24 Q. Who on the lender's side, on the --  
25 I'm sorry, borrower's side, AHE, made the

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1 M. Belfonti  
2 decision to accept the alleged \$393,000 BCP  
3 loan?

4 A. Me.

5 Q. Was there any negotiation concerning  
6 the terms of the alleged \$393,000 loan?

7 A. No.

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8 Q. Was there a maturity or due date for  
9 the repayment of the alleged \$393,000 BCP loan?

10 A. No.

11 Q. Was there a payment schedule for the  
12 alleged \$393,000 BCP loan?

13 A. No.

14 Q. Was there any requirement for --  
15 MR. MERVIS: Withdrawn.

16 Q. Did AHE have any obligation to pay  
17 interest on the alleged \$393,000 BCP loan?

18 A. Not right away.

19 Q. What do you mean by "not right away"?

20 A. Possibly at a later date, there would  
21 have been interest charged.

22 Q. Who -- well, at the time that the, at  
23 the time that you or your company BCP, BCP made  
24 this alleged loan, did you have an understanding  
25 that there would be an interest charge to AHE at

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1 M. Belfonti

2 some point in the future?

3 A. Sometime in the future.

4 Q. What was that understanding?

5 A. It would have been marked at Aruban  
6 rates, something fair and equitable.

7 Q. Was that in your mind at the time  
8 that you decided to make this alleged loan?

9 A. No.

10 Q. When did it first occur to you,  
11 Mr. Belfonti, that AHE would need to pay

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M. Belfonti

handwriting?

A. I do not.

Q. You can put it aside.

Forgive me if I've already asked  
this, but was BCP represented by counsel in  
connection with the making of the alleged  
\$393,000 BCP loan?

A. No.

Q. Was AHE represented by counsel in  
connection with that alleged loan?

A. No.

Q. Going back to Exhibit 6, please, and  
the chart on page 4.

The next two entries bear the same  
date and the same amount; see that?

A. I do.

Q. Are those two entries addressed to  
the same transaction or to different  
transactions?

A. I believe it's the same.

Q. Do you know why -- well, let me ask  
it differently.

First of all, the dates are wrong;  
aren't they?

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M. Belfonti

A. Yes, I believe those are January '07.

Q. The first of the two line items, the  
one that references MCR Property Management,  
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5 Inc., what transaction is reflected in that  
6 line?

7 A. I believe this was a portion of the  
8 money that we needed to satisfy Wachovia in  
9 January of '07.

10 Q. The "we" in there is who, you?

11 A. I.

12 Q. When you say, "satisfy Wachovia,"  
13 what do you mean?

14 A. Again, there was a shortfall in  
15 January of '07. And I believe it was  
16 approximately \$1.8 million.

17 Q. What do you mean by "shortfall"?

18 A. AHE was unable to pay its obligations  
19 to Wachovia with the money that was generated  
20 from the hotel from the prior month.

21 Q. Sorry, I didn't mean to cut you off.  
22 Were you finished?

23 A. Yes.

24 Q. When you say generated by the  
25 operation of the hotel, meaning the cash flow

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1 M. Belfonti  
2 from the hotel?

3 A. That's correct.

4 Q. So the idea, your expectation was or  
5 at least your hope was that you, as the owner of  
6 AHE, would be able to make your mortgage  
7 payments out of the proceeds of the operation of



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the hotel; correct?

A. Yes.

Q. Unfortunately, the hotel wasn't performing as well as it you had hoped, and so the cash generated by the hotel was not sufficient for you to make the January mortgage payment to Wachovia; correct?

A. That's right.

Q. So you needed to come up with, basically, you had to make up the shortfall; right?

In other words, make the payment to Wachovia; correct?

A. That's right.

Q. If you hadn't done that, in other words, if you hadn't found the approximately \$1.8 million that you needed for AHE to make the mortgage payment to Wachovia, what would the

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M. Belfonti

consequence have been?

A. The hotel would have gone into default with its loan.

Q. And you, Michael Belfonti, would have lost your ownership interest in AHE?

A. That is correct.

Q. Would there be any other consequence to AHE that you know of?

A. No.

Q. The line, the next line item, the one  
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12 that references Harlow, Adams & Friedman --  
13 well, they both do, so let me back up.

14 The line that has Harlow, Adams &  
15 Friedman in the third box and Wachovia in the  
16 fourth box, what transaction does that reflect?

17 A. The same one we just discussed,  
18 January of '07.

19 Q. Do you know why there were two boxes  
20 in this chart or two lines in this chart  
21 addressing the same transaction?

22 A. No.

23 Q. Do either of these line items, which  
24 would be the fourth from the top and fifth from  
25 the top, reflect, in your mind, a loan by anyone

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1 M. Belfonti

2 to AHE?

3 A. Yes.

4 Q. Who, in your mind, is the lender or  
5 was the lender?

6 A. MCR Property Management.

7 Q. Not Harlow, Adams & Friedman?

8 A. No.

9 Q. Who, on behalf of MCR, decided to  
10 make this loan, this alleged loan?

11 A. I did.

12 Q. Actually, I will shorthand it and  
13 we'll call this the \$1.3 million MCR loan; okay?

14 A. That's fine.

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- 15 Q. Who, on behalf of AHE, agreed to  
16 accept the \$1.3 million alleged MCR loan?  
17 A. I did.  
18 Q. Was there any negotiation concerning  
19 the terms of the alleged \$1.3 million MCR loan?  
20 A. No.  
21 Q. Was there a payment schedule for the  
22 repayment of the alleged \$1.3 million MCR loan?  
23 A. No.  
24 Q. Was there, did AHE have an obligation  
25 to pay interest on the alleged \$1.3 million MCR

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- 1 M. Belfonti  
2 loan?  
3 A. No.  
4 Q. Was there a due date or a maturity  
5 date for the alleged \$1.3 million MCR loan?  
6 A. No.  
7 Q. Was any security given by AHE for the  
8 alleged \$1.3 million MCR loan?  
9 A. No.  
10 Q. Was there any understanding that the  
11 alleged \$1.3 million MCR loan would be  
12 subordinated to any of AHE's existing  
13 obligations?  
14 A. No.  
15 Q. Did MCR place any restrictions on  
16 what or how AHE could use the proceeds of the  
17 alleged \$1.3 million MCR loan?  
18 A. It went directly to wachovia.

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M. Belfonti

1  
2 know why the alleged \$1.3 million MCR loan went  
3 through Harlow, Adams & Friedman?

4 A. I believe so.

5 Q. why?

6 A. Because there was an amount of  
7 \$548,250 that was aggregated with the  
8 \$1,307,611.80 to pay a total of the 1.8 amount.

9 Q. The Harlow firm already had in its  
10 accounts the \$548,000 sum?

11 A. well, it came out of my mom's trust.

12 Q. How did the -- so I'm clear, the way  
13 it works was MCR wired or transferred, let's use  
14 that word, the \$1.3 million to Harlow, Adams &  
15 Friedman?

16 A. Correct.

17 Q. Then that law firm aggregated that  
18 sum with the 500 some odd thousand dollars that  
19 came from your mother's trust and sent it all on  
20 to Wachovia; right?

21 A. That's right.

22 Q. Going back to Exhibit 6, and the  
23 chart, the second to last entry or second from  
24 the bottom, starts with a date January 8, 2006  
25 and runs across.

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1 M. Belfonti

2 First of all, that date is wrong;  
3 isn't it?

4 A. Yes.

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5 Q. Is should be '07; right?

6 A. It should be.

7 Q. Do you know what transaction is  
8 referenced in that line item on the chart?

9 A. The 548?

10 Q. Yes.

11 A. That was a loan that the trust made.  
12 I believe, I believe the trust made the loan to  
13 Wachovia or excuse me, the trust made the loan  
14 to AHE.

15 Q. So your testimony is that the CEB  
16 Irrevocable Trust made a loan to AHE?

17 A. It was wired, yes, that is correct.

18 Q. The amount of the loan was what  
19 exactly?

20 A. \$548,250.

21 Q. Let me again, for shorthand, I will  
22 refer to this as the CEB loan; okay?

23 A. Okay.

24 Q. Who on the CEB side decided to make a  
25 loan to AHE?

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1 M. Belfonti

2 A. Dana Friedman and myself.

3 Q. Was Mr. Friedman acting as counsel in  
4 making that decision?

5 A. For the trust.

6 Q. He was acting as counsel for the  
7 trust?

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8 A. Correct.

9 Q. To your understanding, did both of  
10 you have to approve the CEB loan in order for it  
11 to be made?

12 A. I believe so.

13 Q. Both of you did approve it?

14 A. Yes.

15 Q. The borrower that you approved was  
16 AHE?

17 A. Yes.

18 Q. Who on the AHE -- who on behalf of  
19 AHE agreed to accept the CEB loan?

20 A. No one. Again, this went directly to  
21 Wachovia.

22 Q. I understand what you are saying.

23 You are saying the funds were  
24 transferred directly to Wachovia; correct?

25 A. That is correct.

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1 M. Belfonti

2 Q. They never went through AHE's  
3 account?

4 A. No.

5 Q. But you claimed on you that AHE was a  
6 borrower from CEB; right?

7 A. That is correct.

8 Q. Who from AHE agreed to be the  
9 borrower?

10 A. Me.

11 Q. Did your mother know about this loan  
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12 at the time it was made, this alleged CEB loan?

13 A. Yes.

14 Q. Your father, did he know about this  
15 alleged CEB loan at the time it was made?

16 A. My dad might have been ill at this  
17 time, so I don't know.

18 Q. Was there any negotiation concerning  
19 the terms of the alleged CEB loan?

20 A. Dana Friedman required that my mom  
21 mortgage her home. So the trust secured its  
22 \$500,000 that it lent to my mom with the  
23 collateral from my mom's house.

24 Q. You are saying that CEB made a loan  
25 to your mother, not to AHE?

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1 M. Belfonti

2 A. To my mom, and then my mom, in turn,  
3 gave it to AHE.

4 Q. I see.

5 A. I believe that's how it went.

6 Q. Was there any negotiation between  
7 CEB, on the one hand, and AHE, on the other  
8 hand, concerning the terms of the alleged CEB  
9 loan?

10 A. No.

11 Q. Was there any negotiation between  
12 your mother, on the one hand, and AHE, on the  
13 other hand, concerning the terms of the alleged  
14 CEB loan?

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M. Belfonti

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Q. With respect to the \$393,000 Belfonti capital -- I'm sorry, the alleged \$393,000 BCP loan, at the time it was made, did you have an understanding as to whether BCP could demand repayment before the Petra loan was repaid in full?

A. I'm not sure.

Q. You'd have to consult with your counsel?

A. Yes.

Q. With respect to the alleged \$1.3 million MCR loan, at the time that was made, did you have an understanding as to whether MCR could demand repayment before the Wachovia loan was repaid in full?

A. I'd like to check with counsel.

Q. You would need to consult with counsel in order to answer that question?

A. Yes.

Q. With respect to the alleged \$1.3 million MCR loan, at the time it was made, did you have an understanding as to whether MCR could demand repayment prior to the Petra loan being paid in full?

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2  
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M. Belfonti

A. I'd like to check with counsel on that.

Q. You need to consult with counsel in  
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5 order to answer that question?

6 A. Yes.

7 Q. Going back to the CEB loan, was -- I,  
8 may have asked this, and if I did, I apologize.

9 Was any security given for that loan?

10 MR. MERVIS: I'm sorry, withdrawn.

11 Q. With respect to the CEB loan, the  
12 alleged CEB loan, was any security given by AHE  
13 for that alleged loan?

14 A. No.

15 Q. How, Mr. Belfonti, were the proceeds  
16 of the alleged CEB loan used?

17 A. To pay the January '07 mortgage.

18 Q. To Wachovia?

19 A. Yes.

20 Q. So that, again, that was the payment  
21 that was combined with the \$1.3 million from  
22 MCR?

23 A. That is correct.

24 Q. From what source did CEB expect to be  
25 repaid?

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1 M. Belfonti

2 A. From AHE.

3 Q. No, I'm sorry. Where did CEB expect  
4 AHE to be able to get the funds from?

5 A. Through a capital event.

6 Q. Any other source?

7 A. Cash flow of the property.

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1 M. Belfonti

2 A. I didn't -- please repeat the  
3 question.

4 Q. Sure.

5 who from the AHE side was --

6 A. I'm sorry.

7 Q. Okay.

8 A. I would think Marieta Ras, but I'm  
9 not sure.

10 Q. You never, you never personally made  
11 her aware of the existence of the alleged CEB  
12 loan; correct?

13 A. No.

14 Q. By "her," I mean Ms. Ras. You never  
15 made Ms. Ras aware of that alleged loan?

16 A. I did not.

17 Q. Did Ms. Ras ever tell you that she  
18 was aware of the existence of the alleged CEB  
19 loan?

20 A. No.

21 Q. Anybody else on the AHE side who you  
22 think was aware of the existence of the CEB  
23 loan?

24 A. Possibly, Alcira.

25 Q. But you don't know for a fact?

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M. Belfonti

1  
2 A. No, I do not.

3 Q. You never spoke to her about this  
4 alleged loan; did you?

5 A. No.

6 Q. Going back, you have in front of you  
7 Exhibit 6, the chart on page 4.

8 Let's go to the very last entry now.

9 Do you have an understanding of what  
10 the bottom line, no pun intended, the last line  
11 on the chart, what transaction that represents?

12 A. Can I use the bathroom?

13 MR. MERVIS: Yes.

14 (Brief recess taken.)

15 FURTHER EXAMINATION

16 BY MR. MERVIS:

17 Q. Going back to Exhibit 6 and the chart  
18 on the fourth page of Exhibit 6, the final or  
19 the entry at the bottom of the chart, do you  
20 know what transaction that refers to?

21 A. That was a, those were monies given,  
22 loaned from MCR to AHE to pay the March 2007  
23 mortgage payment.

24 Q. That was when you say, "mortgage  
25 payment," that was the payment to Wachovia?

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1 M. Belfonti

2 A. Correct.

3 Q. The same type of payment that we have  
4 been discussing, I think, with respect to the  
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5 other transactions?

6 A. Yes.

7 Q. Was it important to you,

8 Mr. Belfonti, to make these mortgage payments to  
9 Wachovia?

10 A. Yes.

11 Q. Why?

12 A. Had I not paid the mortgage payments,  
13 the loan would go into default.

14 Q. Why was that important to you or why  
15 was it important to you for the loan not to go  
16 into default?

17 A. I'm in the real estate investment and  
18 development business, and it's not a good thing  
19 for investors, such as myself, to default on  
20 loans.

21 Q. Is that because or is that -- is one  
22 of the reasons why it's not good because it can  
23 make it harder to get a loan in the future?

24 A. That's one of the reasons.

25 Q. What other reasons are there?

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1 M. Belfonti

2 A. I think that's the main reason.

3 Q. You didn't make the April 2007  
4 mortgage payment to Wachovia; correct?

5 A. That is correct.

6 Q. Why?

7 A. I had limited resources to put into

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8 the hotel, and I made a conscious decision at

9 that point not to keep putting money into it.

10 Q. When you say, keep putting money into  
11 it," what money are you talking about?

12 A. The next payment which would have  
13 been the April payment.

14 Q. According to you, you had, in order  
15 to make the mortgage payments to Wachovia in  
16 December of '06 and January of '07, you had  
17 arranged to make loans from entities that you  
18 opened to AHE; correct?

19 A. That is correct.

20 Q. You claim you had an expectation that  
21 at some point in time, they'd be repaid; is that  
22 correct?

23 A. That is correct.

24 Q. So when April rolled around, why  
25 couldn't you have just gone to another one of

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1 M. Belfonti

2 your entities and made another loan?

3 A. I just didn't know how much more  
4 money the hotel was going to lose after April  
5 and May and June and July, and I had lost faith  
6 in Starwood as a management company and their  
7 ability to make the hotel perform.

8 Q. You knew, didn't you, that if you put  
9 more money into the hotel, and eventually wound  
10 up defaulting anyway, that you would have a very  
11 difficult time claiming repayment of these

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12 alleged loans to AHE from the new owner;  
13 correct?

14 A. No.

15 Q. You didn't think about that?

16 A. Not at all.

17 Q. Is that because you decided for the  
18 first time that the transactions, reflected on  
19 Exhibit 6, were loans after you defaulted and  
20 lost the hotel?

21 A. No, they were always loans. They  
22 were always booked on my books. Always booked  
23 on the general ledger as loans. That was my  
24 intent always to pay them back.

25 Q. I'm sorry, what was the last piece?

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2 A. It was always my intent to pay them  
3 back.

4 Q. It was your intent to pay them back?

5 A. It was the, my intent to have AHE pay  
6 back all the loans.

7 Q. Regardless of whether you still owned  
8 AHE or not?

9 A. No.

10 Q. That's not correct?

11 A. That's not correct.

12 Q. What's not correct about it?

13 A. If I didn't own AHE, I wouldn't be  
14 able to get the loans back.

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15 Q. Why is that?

16 A. Because we made a demand on AHE and  
17 they refused to pay.

18 Q. You didn't know that at the time,  
19 though -- when you owned AHE, when you owned  
20 AHE, was it your expectation that if you lost  
21 control of AHE, you would still be able to get  
22 repayment on these alleged loans?

23 A. Yes.

24 Q. What was that expectation based on?

25 A. The fact that the loans were made

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2 from entities other than myself.

3 Q. I'm sorry, can you explain that  
4 answer?

5 A. Sure. The related entities that lent  
6 AHE money, these were entities that were not  
7 part of the ownership of the hotel.

8 Q. Have you had any dealings with  
9 Starwood since the time that you defaulted on --  
10 that AHE defaulted on the Wachovia loan?

11 A. I have not.

12 Q. Going back to the chart and what you  
13 describe as a loan from MCR to AHE.

14 So I'm clear, your claim is that the  
15 alleged lender is MCR and the alleged borrower  
16 was AHE?

17 A. That is correct.

18 Q. The amount was approximately \$1.1  
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19 million; correct?

20 A. 1.2, closer to.

21 Q. So I'm going to refer to this as the  
22 \$1.2 million MCR loan; okay?

23 A. Sure.

24 Q. Who at MCR made the decision to make  
25 the alleged \$1.2 million MCR loan?

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2 A. I did.

3 Q. Who at AHE made the decision to  
4 accept the alleged \$1.2 million MCR loan?

5 A. I did.

6 Q. Was there any negotiation concerning  
7 the terms of the alleged \$1.2 million MCR loan?

8 A. No.

9 Q. Was there a payment schedule for the  
10 alleged \$1.2 million MCR loan?

11 A. No.

12 Q. Did, at the time that you, on behalf  
13 of AHE, decided to accept the alleged \$1.2  
14 million MCR loan, did you obligate AHE to pay  
15 interest on that loan?

16 A. I, as I had said in an earlier  
17 statement, there was an implied interest that we  
18 pay vis-a-vis our intercompany loans.

19 So AHE would have been obligated to  
20 pay some interest rate.

21 Q. Twelve percent, according to you;



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12 A. I have to hear the question again.

13 (The record was read.)

14 MR. MERVIS: Read it back.

15 A. I didn't think about it.

16 Q. Just for completeness sake, the  
17 alleged CEB loan, that was never presented to  
18 AHE's supervisory board for approval; was it?

19 A. It was not.

20 Q. With respect to each of the  
21 transactions that are identified on the fourth  
22 page of Exhibit 6, did you seek legal advice  
23 from anyone in connection with the making of  
24 those transactions?

25 A. No.

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1 M. Belfonti

2 MR. MERVIS: Mark this, please.

3 (Belfonti Exhibit 11, a document,  
4 marked for identification, as of this  
5 date.)

6 Q. Mr. Belfonti, you've been handed what  
7 we have had marked for identification as Exhibit  
8 11.

9 Take as much time as you need, but my  
10 first question to you, sir, is if you recognize  
11 the document?

12 A. I do.

13 Q. When was the first time you saw this?

14 A. I would guess sometime in January of

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2007.

15 Q. Who showed it to you?

16 A. I don't know if I ever saw this. I  
17 knew about the transaction. It was associated  
18 with this, but I don't know if I ever saw the  
19 document itself or the letter.  
20

21 Q. Tell me what your understanding of  
22 the transaction associated with Exhibit 11 is?

23 A. My mom and dad borrowed \$550,000 from  
24 my mom's trust.

25 Q. They put up their house as collateral

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2 for that loan?

3 A. That is correct.

4 Q. Then they gave that loan, they gave  
5 the proceeds of that loan to you; right?

6 A. No, they gave it to Dana Friedman.

7 Q. Right, they gave it to Dana Friedman,  
8 and then you instructed Dana Friedman to send  
9 that money to Wachovia Bank; right?

10 A. With the additional 1.3.

11 Q. So that you could make the mortgage  
12 payment; right?

13 A. So that AHE could make the mortgage  
14 payment.

15 Q. So that you could continue to own  
16 AHE; correct?

17 A. That is correct.

18 Q. Just go to the second page of Exhibit  
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19 11?

20 There's an asterisk about halfway  
21 down the page.

22 Take a moment to read that to  
23 yourself and let me know when you've read it?

24 A. (The witness complies with request.)  
25 Yes, I read it.

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2 Q. Do you know there is a reference  
3 there to a note being prepared; you see that?

4 A. I do.

5 Q. Do you know if any such note was ever  
6 prepared?

7 A. No, I don't.

8 Q. Do you know who Richard Herman is?

9 A. Yes.

10 Q. He's one of your employees in  
11 Connecticut?

12 A. He's a consultant, actually.

13 Q. What does he consult about?

14 A. Accounting.

15 Q. So he's an independent contractor?

16 A. Yes, basically.

17 Q. Did you ever instruct Mr. Herman to  
18 prepare the note that's referenced in this  
19 sentence or these two sentences?

20 A. I did not, no.

21 MR. MERVIS: Mark this as Exhibit 12.